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3745-1-05 Antidegradation

(A) Definitions.

- (1) "Available pollutant assimilative capacity" means the water body pollutant assimilative capacity for a substance, as determined in paragraph (A)(26)(a) of this rule, minus the background pollutant load, or the quantity for a substance as calculated in paragraph (A)(26)(b) of this rule.
- (2) "Background pollutant load" means the sum of: the upstream pollutant load of a substance; all tributary loads in the segment; and the pollutant loads from discharges in the segment that discharge the pollutant but are not receiving an allocation or permit limit for that pollutant. All portions of the background pollutant load shall be based upon appropriate methods identified in the total maximum daily load procedures, and shall be determined for all substances that impact the segment receiving the allocation.
- (3) "Best available demonstrated control technology" means a wastewater treatment capable of meeting the effluent limitations in paragraph (A)(3)(a) or (A)(3)(b) of this rule, or a treatment designed as in accordance with the provisions of paragraphs (A)(3)(c) to (A)(3)(f) of this rule.
 - (a) For the discharge of sanitary wastewater from facilities using conventional treatment technologies, the effluent limitations in table 5-1 of this rule.
 - (b) For the discharge of sanitary wastewater from alternative treatment technologies such as lagoon systems, land application and controlled discharge systems, constructed wetland systems or combined sewer overflow control systems effluent limitations shall be developed on a case-by-case basis.
 - (c) For industrial direct discharges subject to federal effluent guidelines, the facility shall be designed to meet the most stringent of the new source performance standards, best conventional pollutant control technology, best available technology economically achievable and best practicable control technology currently available for the appropriate categorical guidelines of 40 C.F.R.
 - (d) For categorical industrial indirect dischargers, the facility shall be designed to meet categorical pretreatment standards for existing sources or categorical pretreatment standards for new sources as contained in Chapter 3745-3 of the Administrative Code.
 - (e) For non-categorical industrial direct or indirect discharges, effluent limitations will be developed based upon best engineering/professional judgment.
 - (f) For wastewater discharges resulting from clean-up of response action sites contaminated with volatile organic compounds, the facility shall include air-stripping, carbon columns, both, or equivalent treatment capable of achieving final thirty-day

average effluent limits of five micrograms per liter or less for each individually regulated volatile organic compound.

(4) "Control document" means any authorization issued by a state or federal agency to any source of pollutants to waters under its jurisdiction that specifies conditions under which the source is allowed to operate.

(5) "Declining fish species" mean those native species that have declined in distribution across Ohio based on collection records since 1978 compared to historical distributions of fish species documented in "Fishes of Ohio" (Trautman, 1981). No later than ninety days after the effective date of this rule, the director, in consultation with the director of the department of natural resources, shall establish and make available through public notice a registry of declining fish species. In the event that improved water quality results in the decline of any pollutant tolerant native fish species the director may elect not to include such species on the registry if the ecological risks appear minimal. The registry shall be revised periodically if public comments or other circumstances justify.

(6) "Existing discharge" means a direct discharge of pollutants to waters of the state in existence at the time of the applicant's request to transfer pollutant loading.

(7) "Existing effluent quality based permit limitations" mean discharge limits for specific pollutants specified in national pollutant discharge elimination system permits issued prior to July 1, 1993 that were derived from an analysis of effluent quality reported in monthly operating report data, including any negotiated limits that were based in part upon an analysis of effluent quality reported in monthly operating report data.

(8) "Existing source" means any treatment works that were built and operational under the terms of a national pollutant discharge elimination system permit prior to July 1, 1993, but does not include expansions or upgrades of existing treatment works authorized pursuant to rule 3745-31 {1} of the Administrative Code after July 1, 1993.

{1} So in original. Should this read "Chapter 3745-31"?

(9) "High quality waters" mean all surface waters of the state except limited quality waters. Pursuant to division (A)(2) of section 6111.12 of the Revised Code, five categories of high quality waters are hereby recognized and described in this paragraph. Designations of specific water bodies shall follow the procedures in paragraph (E) of this rule.

(a) "General high quality waters" are wetlands categorized as category 2 or 3 in accordance with rule 3745-1-54 of the Administrative Code and other surface waters that are not specifically designated limited quality waters, superior high quality waters, outstanding national resource waters, outstanding high quality waters, or state resource waters.

(b) "Superior high quality waters" are surface waters that possess exceptional ecological values, exceptional recreational values or both, and that have been so designated pursuant to paragraph (E) of this rule. Except as provided below, exceptional ecological values shall be assessed based upon a combination of the presence of threatened or endangered species and a high level of biological integrity. The following factors shall be considered in determining exceptional ecological value: providing habitat for Ohio or federal endangered species; providing habitat for Ohio threatened species; harboring stable

populations of a declining fish species that coincide with the presence of suitable habitat for that species, or that coincide with an essential migration path between areas of suitable habitat for that species; and displaying a level of biological integrity equivalent to the exceptional warmwater habitat index of biotic integrity and/or invertebrate community index criteria values listed in rule 3745-1-07 of the Administrative Code. Water bodies that exhibit a pattern of biological integrity equivalent to index of biotic integrity and, where applicable, invertebrate community index scores of fifty-six or greater at most sites are characteristic of a nearpristine aquatic habitat. Such waters, as well as other ecologically unique water bodies that have essentially undisturbed native faunas, but for which the biological criteria in rule 3745-1-07 of the Administrative Code do not apply, may be considered as possessing exceptional ecological values without the presence of threatened or endangered species.

Exceptional recreational values may include providing outstanding or unique opportunities for recreational boating, fishing or other personal enjoyment.

(c) "State resource waters" are surface waters so designated in rules 3745-1-08 to 3745-1-30 of the Administrative Code and all publicly owned lakes and reservoirs.

(d) "Outstanding national resource waters" and "outstanding high quality waters" are surface waters that have a national ecological or recreational significance, and that have been so designated pursuant to paragraph (E) of this rule. National ecological significance may include providing habitat for populations of federal endangered or threatened species or displaying some unique combination of biological characteristics in addition to those factors listed in paragraph (A)(9)(b) of this rule. National recreational significance may include designation in the national wild and scenic river system.

(10) "Land application and controlled discharge system" means an innovative technology for the treatment of sewage that balances land application of treated wastewater with controlled discharges of wastewater under conditions that minimize stress on the aquatic environment. The system shall be designed to allow a maximum increase of 0.1 milligram per liter of ammonia-nitrogen in the receiving water body calculated according to methods contained in the total maximum daily load procedures.

(11) "Limited quality waters" mean wetlands categorized as category 1 in accordance with rule 3745-1-54 of the Administrative Code and other surface waters of the state specifically designated in rules 3745-1-08 to 3745-1-30 of the Administrative Code as limited resource water, nuisance prevention, limited warmwater habitat or modified warmwater habitat.

(12) "Minimal degradation alternative" means an alternative, other than the applicant's preferred alternative, including pollution prevention alternatives, that would result in a lesser lowering of water quality.

(13) "Mitigative technique alternative" means an alternative, other than the applicant's preferred alternative, or other on-site or off-site control measures designed to offset all or part of the lowering of water quality within the same watershed.

(14) "Modification" has the same meaning as defined in paragraph (J) of rule 3745-31-01 of the Administrative Code.

(15) "Net increase" means the amount by which the sum of the following exceeds zero:

(a) The increase in a mass discharge limit attributable to the activity subject to this rule; and

(b) All other contemporaneous increases or decreases attributable to other pollutant

source(s) affecting the surface water segment(s) under consideration and which are stipulated as a condition of the applicant's permit and which shall occur during the term of the applicant's permit.

(16) "New source" means any treatment works or disposal system other than an existing source.

(17) "Non-degradation alternative" means an alternative, other than the applicant's preferred alternative, including pollution prevention alternatives, that would result in the elimination of the need to lower water quality.

(18) "Permit modification" means an application filed by the permit holder pursuant to paragraph (D) of rule 3745-33-04 of the Administrative Code.

(19) "Permitted discharge flow" means the discharge flow specified in the national pollutant discharge elimination system permit, or permit to install application if not specified in a national pollutant discharge elimination system permit, and shall be representative of the typical wastewater flow to be discharged by a facility when the wastewater facility is operating at full capacity, and considering, where applicable, discharge flows during wet weather events. Applicable wet weather flows include, but are not limited to, the increased flows at publicly owned treatment works authorized pursuant to national or state combined sewer overflow strategies and the routing of pre-existing industrial site stormwater runoff to an existing wastewater treatment facility.

(20) "Pollution prevention alternative" means the use of source reduction techniques in order to reduce risk to public health, safety, welfare and the environment and, as a second preference, the use of environmentally sound recycling to achieve these same goals. Pollution prevention avoids cross-media transfers of waste and/or pollutants and is multi-media in scope; it addresses all types of waste and environmental releases to the air, water and land.

(21) "Regulated pollutant" means any parameter for which water quality criteria have been adopted in, or developed pursuant to, Chapter 3745-1 of the Administrative Code, with the exception of biological criteria, and any other parameter limited in a national pollutant discharge elimination system permit as a result of new source performance standards, best conventional pollutant control technology, best available technology economically achievable or best practicable control technology currently available for the appropriate categorical guidelines of 40 C.F.R.

(22) "Remaining available pollutant assimilative capacity" means the available pollutant assimilative capacity for a substance minus the load already allocated to existing national pollutant discharge elimination system permits for dischargers in the water body segment receiving the allocation. This term is not used in the application of ~~antidegradation~~ for lake Erie.

(23) "Threatened species" means an indigenous species whose survival in Ohio is not in immediate jeopardy, but to which a threat exists. Continued or increased stress will result in its becoming endangered. No later than ninety days after the effective date of this rule, the director, in consultation with the director of the department of natural resources, shall establish and make available through public notice a registry of threatened aquatic species. The registry shall be revised periodically if public comments or other circumstances justify.

(24) "Total maximum daily load procedures" mean the procedures, policies and guidelines for calculating wasteload allocations used by the director as of July 1, 1993, or

subsequent revisions to those procedures established in rules adopted in accordance with Chapter 119. of the Revised Code.

(25) "Trace contaminants of primarily domestic origin" means any non-oxygen demanding substance potentially found in sewage, including, but not limited to, copper, cadmium, lead, chromium and zinc, provided that such substances are not discharged to the disposal system from a new or expanded industrial water pollution control facility.

(26) "Water body pollutant assimilative capacity" means the total maximum allowable load of a substance for a specific water body segment and is calculated as:

(a) For a stream, the water quality criteria for a substance multiplied by the total applicable flow at the end of the segment being studied. The applicable flow is determined using the total maximum daily load procedures; and

(b) For lake Erie, a value equal to the permitted discharge flow times Y, where Y equals eleven times the water quality criteria for a substance minus ten times the background concentration for the substance.

Water body pollutant assimilative capacity for lake Erie can also be determined by any alternative method which the director determines to be appropriate and consistent with the total maximum daily load procedures.

(B) Applicability; responsibilities of the applicant.

Except as provided in paragraphs (D) and (F) of this rule, projects or activities covered under paragraph (B)(1) of this rule shall be subject to an ~~antidegradation~~ review described in paragraph (C) of this rule.

(1) This rule shall apply to the activities, permits, certifications and other circumstances described in this paragraph.

(a) For existing sources, any re-issuance or modification of a national pollutant discharge elimination system permit that, if approved, would result in a net increase in the discharge of any regulated pollutant as determined using the following criteria:

(i) Net increase of the average thirty-day mass limit specified in the national pollutant discharge elimination system permit, if an average mass limit is specified;

(ii) If no average mass limit is specified, then a net increase above the product of:

(a) The average concentration limit specified in the national pollutant discharge elimination system permit, if an average concentration limit is specified, and

(b) The permitted discharge flow or the flow used in the wasteload allocation;

(iii) If neither an average mass limit nor an average concentration limit are specified, then a net increase above the product of:

(a) An average concentration value derived from the maximum concentration limit specified in the national pollutant discharge elimination system permit, if a maximum concentration limit is specified, using derivation methods established in the total maximum daily load procedures, and

(b) The permitted discharge flow or the flow used in the wasteload allocation;

(iv) If the national pollutant discharge elimination system permit specifies no limit for the pollutant, then the imposition of any effluent limit if the pollutant is present, or present in greater amounts, because of any of the following conditions:

(a) A physical change in, or change in the operation of, a publicly owned treatment works; or

(b) The addition of a significant industrial user, as defined in rule 3745-3-01 of the Administrative Code; or

- (c) A physical change in, or change in the operation of, industrial processes and/or wastewater treatment at a significant industrial user as defined in rule 3745-3-01 of the Administrative Code; or
- (d) A physical change in, or change in the operation of, industrial processes and/or wastewater treatment at a permitted facility other than a publicly owned treatment works.
- (b) For new sources not already in existence as of October 1, 1996, any permit to install or national pollutant discharge elimination system permit application that, if approved, would result in a net increase in the discharge of any regulated pollutant.
- (c) For new sources already in existence as of October 1, 1996, if the source is discharging to waters of the state under the terms of a national pollutant discharge elimination system permit issued on or after July 1, 1993, or if the new source is comprised entirely of stormwater runoff from an existing site or facility whether under permit or not, the criteria for determining this rule's applicability shall be those specified in paragraph (B)(1)(a) of this rule. Except as provided above for stormwater runoff, if the new source is already in existence and discharging to waters of the state without a national pollutant discharge elimination system permit, the net increase shall be determined based upon the discharge of any regulated pollutant above the product of:
 - (i) The ninety-fifth percentile of the actual concentrations calculated according to procedures established in the total maximum daily load procedures, and
 - (ii) The permitted discharge flow or the flow used in the wasteload allocation.
- (d) Any section 401 water quality certification application pursuant to Chapter 3745-32 of the Administrative Code.
- (e) Any nonpoint source of pollution that results in a net increase in the release of any regulated pollutant, provided the director has separate authority to regulate the activity.
- (f) Any permit to install application reviewed pursuant to Chapter 6111. of the Revised Code that involves the placement of fill or any portion of a sewerage system in or near a stream bed, if the director determines that stream habitat alterations caused by the activity would lower the water quality as measured by the applicable biological criteria identified in rule 3745-1-07 of the Administrative Code by more than the following amount(s): index of biotic integrity, four units; or, invertebrate community index, four units; or, modified index of well-being, 0.5 units.
- (g) The transfer of all or a portion of the wastewater discharged by a treatment works to a different receiving water body, or to a different treatment works discharging to a different water body, unless the transfer is to a treatment works with capacity to accept the transferred wastewater within the terms of its existing national pollutant discharge elimination system permit, or to an existing outfall at a facility which is subject to best available treatment economically achievable or new source performance standards established under 40 C.F.R. [part 420](#) and for which alternative limitations derived under 40 C.F.R. part 420.03 are being sought.
- (h) Any dredge and fill permit issued pursuant to paragraph (B) of rule 3745-32-02 of the Administrative Code authorizing discharges of dredged material or fill material into isolated waters of the state as defined in paragraph (J) of rule 3745-32-01 of the Administrative Code.
- (2) Except as provided in paragraphs (D) and (F) of this rule, the applicant covered by paragraph (B)(1) of this rule must submit documentation of the following.
 - (a) Identification of the substances to be discharged, including the amount of regulated

- pollutants to be discharged in terms of mass and concentration, and, if paragraph (B)(1)(d) of this rule applies, the amount of dredged and fill material to be discharged.
- (b) A description of any construction work, fill or other structures to occur or be placed in or near the stream bed.
- (c) A description of the applicant's preferred alternative for design and operation of the activity.
- (d) Descriptions and analyses of non-degradation alternatives, minimal degradation alternatives and mitigative technique alternatives for the design and operation of the activity that the applicant has considered.
- (e) An estimate of the important social, economic and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate, the number and types of jobs created and the tax revenues generated.
- (f) An estimate of important social, economic and environmental benefits to be lost if water quality is lowered, such as lost or lowered recreational opportunities.
- (g) To the extent that such information is known to those in the local community or is otherwise public, a listing and description of all government or privately sponsored conservation projects that have specifically targeted improved water quality and/or enhanced recreational opportunities on the water body(ies) affected by the activity.
- (C) ~~Antidegradation~~ review requirements.

(1) Protection of water body uses.

Existing instream water uses, as defined in rule 3745-1-07 of the Administrative Code, shall be maintained and protected. There may be no degradation of water quality that results in a violation of the applicable water quality criteria for the designated uses, or the elimination or substantial impairment of existing instream water uses. The director shall, pursuant to paragraph (A)(6) of rule 3745-1-07 of the Administrative Code, prohibit increased concentrations of specific regulated pollutants that are incompatible with the attainment or restoration of the designated use. Existing wetland uses, as defined in rule 3745-1-53 of the Administrative Code, shall be maintained and protected in accordance with rules 3745-1-50 to 3745-1-54 of the Administrative Code.

(2) Required treatment technology, nonpoint source controls.

Except as provided in paragraph (D)(2) of this rule, any net increase in the discharge of a specific regulated pollutant resulting from a modification or new source shall, as a minimum, be controlled through best available demonstrated control technology relative to the specific regulated pollutant. More stringent treatment may be required pursuant to paragraph (C)(8) of this rule, or if needed to meet water quality standards. Feasible management or regulatory programs pursuant to sections 208, 303 and 319 of the Act, 33 U.S.C. Sections 1288, 1313 and 1329, shall be applied to nonpoint sources.

(3) Public involvement.

The director shall provide for public participation and intergovernmental coordination prior to taking action on all activities covered by paragraph (B)(1) of this rule using the provisions of this paragraph.

- (a) The director shall publish a public notice within thirty days regarding receipt of any permit to install application, national pollutant discharge elimination system permit application or section 401 water quality certification application covered by paragraph (B)(1) of this rule. The purpose of such notice shall be to inform other potentially affected persons, to allow for inspection and review of the application, to indicate

whether any of the exclusions or waivers described in paragraph (D) of this rule apply, to instruct people to contact the director within thirty days, if they want to be on the interested parties mailing list for that application, to advertise the date, time and place of any public hearing required under paragraph (C)(3)(c) of this rule, and, on general high quality waters and limited quality waters, to determine whether there is interest in having a public hearing.

All notices of hearings required by paragraph (C)(3)(c) of this rule shall be published once in a newspaper having general circulation in the county where the source, activity or facility is located. The notice shall be published at least forty-five days before the hearing. Notices shall also be sent by first class mail to all persons on the mailing list created pursuant to paragraph (C)(3)(b) of this rule.

(b) The director shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in ~~antidegradation~~ reviews.

(c) Within ninety days of receipt of the application, the director shall hold a public hearing for any permit to install application, or national pollutant discharge elimination system permit application or section 401 water quality certification application for a category 3 wetland covered by paragraph (B)(1) of this rule whenever a water body designated outstanding national resource water, outstanding high quality water, state resource water or superior high quality water is affected. This public hearing shall be for the purpose of evaluating issues related to lower water quality and shall be prior to and separate from a public hearing on the proposed or draft action on the application.

(d) For general high quality waters other than category 3 wetlands and for limited quality waters, the director shall hold a public hearing for any permit to install application, national pollutant discharge elimination system permit application or section 401 water quality certification application covered by paragraph (B)(1) of this rule whenever the director determines there is significant public interest. A public notice advertising the date, time and place of the public hearing shall be published once in a newspaper having general circulation in the county where the source, activity or facility is located. The notice shall be published at least forty-five days before the hearing, unless the director determines there are no complex or controversial matters to be addressed in which case the notice requirement is reduced to no less than thirty days. Notices shall also be sent by first class mail to all persons on the mailing lists created pursuant to paragraphs (C)(3)(a) and (C)(3)(b) of this rule.

The director shall hold public hearings relative to issues of lower water quality either as a separate public hearing preceding the proposed or draft action, or as a concurrent hearing at the time of the draft or proposed action, unless the application is covered by paragraph (D) of this rule. If the application is covered by paragraph (D) of this rule and the application is not otherwise covered by paragraph (C)(3)(c) of this rule, the director shall hold concurrent public hearings at the time of the draft or proposed action.

(e) A public notice of the director's proposed or draft action regarding the activity and its potential to lower water quality shall be published following the procedures in Chapter 3745-47 of the Administrative Code. The director shall provide notification by first class mail to all interested parties identified through the procedures in paragraph (C)(3) of this rule. Additional procedures are described in paragraph (C)(8) of this rule.

(f) The director shall notify the Ohio department of natural resources, the United States

fish and wildlife service, the United States environmental protection agency and any affected local areawide planning agencies of all proposed activities that may lower water quality. In addition, for activities covered under paragraph (B)(1)(a), (B)(1)(b), (B)(1)(c) or (B)(1)(g) of this rule, the director shall notify the Ohio department of development and any affected local governmental units. The director or the other agencies may initiate additional intergovernmental coordination.

(4) Outstanding national resource waters.

The director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule that discharge to outstanding national resource waters, or that discharge upstream of outstanding national resource waters.

(a) Present ambient water quality in outstanding national resource waters shall not be degraded for any substance.

(b) The director may re-issue permits for any source discharging to an outstanding national resource water if the source had a national pollutant discharge elimination system permit at the time the water body was designated an outstanding national resource water as described in paragraph (E) of this rule, provided there is no increase in the permitted discharge concentrations or loads.

(c) New sources may not discharge directly to outstanding national resource waters, and may not discharge at points located upstream from outstanding national resource waters unless it can be demonstrated by the applicant that the chemical and biological quality of the outstanding national resource water will not be adversely affected.

(d) Notwithstanding the provision stated in paragraph (C)(4)(a) and (C)(4)(e) of this rule, activities that result in short-term changes in water quality in outstanding national resource waters may be allowed if the director determines there will be no long-term detrimental impact. Activities resulting in short-term impacts on outstanding national resource waters will be subject to a review of non-degradation alternatives, minimal degradation alternatives, mitigative technique alternatives, economic and social benefits, public participation and intergovernmental coordination.

(e) Notwithstanding the provisions stated in paragraphs (C)(4)(a) and (C)(4)(d) of this rule discharges of dredged and fill material to outstanding national resource waters that are wetlands, and are owned and managed solely for natural area preservation, public recreation, education or scientific purposes, may be authorized provided the discharges and associated activities result in only a short-term disturbance to water quality and will not adversely affect the ecological quality of the wetland or other surface waters.

Authorized discharges and associated activities include boardwalk construction, repair and maintenance of dikes and other hydrological controls, and removal of non-native and invasive plant species. For these discharges and associated activities the director may waive the need for the review outlined in paragraph (C)(4)(d) of this rule.

(5) Outstanding high quality waters.

The director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule that discharge to outstanding high quality waters, or that discharge upstream of outstanding high quality waters and measurably affect the water quality of an outstanding high quality water.

(a) The director may re-issue permits for existing sources discharging to outstanding high quality waters, but there may be no net increase in allowable mass loading. There may be no increase in permitted discharge concentration of regulated pollutants unless the

increase is the result of water conservation practices at the facility. This increase in concentration may not exceed a five per cent change in the ambient water quality of the receiving water as projected to occur under appropriate environmental design conditions.

(b) New sources and modifications may not discharge directly to outstanding high quality waters unless the discharge is equivalent to the existing background water quality at the proposed point of discharge.

(c) New sources and modifications may not discharge at points located upstream from outstanding high quality waters unless it can be demonstrated by the applicant that the chemical and biological quality of the outstanding high quality water will not be measurably affected. Measurably affected in this context shall mean a change which can be detected with reasonable scientific certainty using the analytical methods cited in rule 3745-1-03 of the Administrative Code, provided any proposed discharge complies with all applicable water quality standards and will not raise pollutant loading rates to harmful levels.

(d) Activities that result in short-term changes in water quality in outstanding high quality waters may be allowed if the director determines there will be no long-term detrimental impact. Activities resulting in short-term impacts on outstanding high quality waters will be subject to a review of non-degradation alternatives, minimal degradation alternatives, mitigative technique alternatives, economic and social benefits, public participation and intergovernmental coordination.

(6) Other waters.

For waters other than outstanding national resource waters, outstanding high quality waters and limited quality waters, the director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule. Except that for section 401 water quality certifications or individual dredge and fill permits for high quality waters that are wetlands, the director shall impose the requirements specified in rules 3745-1-50 to 3745-1-54 of the Administrative Code in lieu of paragraphs (C)(6) and (C)(8) of this rule. In addition, the director may apply the items in paragraphs (C)(6)(a) to (C)(6)(f) and (C)(6)(k) to (C)(6)(m) of this rule, may consider cumulative impacts as defined in paragraph (I) of rule 3745-1-50 of the Administrative Code, and shall consider whether the wetland is scarce regionally or statewide and the feasibility of replacing that wetland type, in making a decision whether to allow the lowering of water quality.

The director may approve activities that lower water quality only if there has been an examination of non-degradation, minimal degradation and mitigative technique alternatives, a review of the social and economic issues related to the activity, a public participation process and appropriate intergovernmental coordination, and the director determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the water body is located.

The director may require the applicant to implement a non-degradation alternative, a minimal degradation alternative or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the director determines that the alternative is technically feasible and economically justifiable. Any lowering of water quality shall not exceed the limitations specified in paragraph (C)(7) of this rule.

When making determinations regarding proposed activities that lower water quality the director shall consider the following:

(a) The magnitude of the proposed lowering of water quality;

- (b) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;
- (c) The anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;
- (d) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas or waters designated outstanding high quality waters, outstanding national resource waters, superior high quality waters or state resource waters;
- (e) The effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;
- (f) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;
- (g) The cost of the water pollution controls associated with the proposed activity;
- (h) The cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;
- (i) The availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;
- (j) The availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;
- (k) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;
- (l) The condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the director deems appropriate; and
- (m) Any other information regarding the proposed activities and the affected water body that the director deems appropriate.

(7) Set asides to limit lower water quality.

In addition to the other provisions of paragraph (C) of this rule, the director shall not allow water quality to be lowered by more than as specified in this paragraph when acting on applications covered by paragraph (B)(1) of this rule.

(a) Except as provided in paragraphs (C)(7)(b) and (D)(1)(b)(iv) of this rule, present ambient water quality in state resource waters will not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the director.

(b) If the other provisions of paragraph (C) of this rule are followed, the director may allow a lowering of water quality in state resource waters if it is the result of the discharge of oxygen demanding wastewater and other trace contaminants of primarily domestic origin, and the effluent limits are equivalent to or better than those in table 5-1 of this rule. At the time the director acts on the application, he shall reserve a portion of

the remaining available pollutant assimilative capacity as it relates to ammonia-nitrogen, dissolved oxygen and biochemical oxygen demand. The reserved portion shall be determined on a case-by-case basis and shall be specified in the public notice, fact sheet and permit associated with the application.

(c) For lake Erie, new and existing sources shall be limited to the water body pollutant assimilative capacity as defined in paragraph (A)(26)(b) of this rule.

(d) For superior high quality waters other than lake Erie, the director shall reserve a portion of the remaining available pollutant assimilative capacity for all regulated pollutants for which water quality criteria have been established in Chapter 3745-1 of the Administrative Code. The reserved portion shall be within the range of ninety to thirty per cent of the remaining available pollutant assimilative capacity, shall apply to all regulated pollutants and shall not be allocated to any source. The director shall determine the appropriate reserved portion at the time the water body is designated as a superior high quality water under paragraph (E) of this rule. The requirements of this paragraph shall not apply to any water body that is not listed in rules 3745-1-08 to 3745-1-30 of the Administrative Code or to any water body designated as a superior high quality water solely because of its exceptional recreational value.

(e) For general high quality waters and limited quality waters, water quality may not be lower than the applicable water quality criteria for the water body.

(8) Procedures.

(a) The director shall assess each proposed activity covered by paragraph (B)(1) or (F) of this rule on a case-by-case basis. For each proposed activity not otherwise excluded pursuant to paragraph (D) of this rule, the director shall weigh the applicant's information and all comments presented during the public review period, including intergovernmental comments, and make a determination to:

(i) Allow the applicant's preferred alternative and the lower water quality as proposed;

(ii) Deny the applicant's preferred alternative as proposed;

(iii) Allow the applicant's non-degradation alternative(s) in lieu of the applicant's preferred alternative that, if implemented by the applicant, would result in no lowering of water quality; or,

(iv) Allow the applicant's minimal degradation alternative(s) or acceptable mitigative technique alternative(s) in lieu of the applicant's preferred alternative that, if implemented by the applicant, would result in a lesser lowering of water quality.

(b) Any action of the director issuing a permit to install or a national pollutant discharge elimination system permit covered under paragraph (B)(1) or (F) of this rule shall be preceded by a draft action and shall be issued in accordance with Chapter 3745-47 of the Administrative Code.

(c) Any action of the director denying a permit to install or a national pollutant discharge elimination system permit covered under paragraph (B)(1) or (F) of this rule shall be preceded by a proposed action and shall be issued in accordance with Chapter 3745-47 of the Administrative Code.

(d) Any action of the director on a section 401 water quality certification covered under paragraph (B)(1) or (F) of this rule shall be taken in accordance with Chapters 3745-32 and 3745-47 of the Administrative Code.

(D) Exclusions and waivers.

The exclusions and waivers described in paragraphs (D)(1)(a), (D)(1)(b), (D)(1)(d),

(D)(1)(e) and (D)(3) of this rule do not apply to bioaccumulative chemicals of concern within the lake Erie basin.

(1) The following situations are excluded from the submittal and review requirements listed in paragraphs (B)(2)(c) to (B)(2)(g), (C)(6) and (C)(8) of this rule.

(a) Any source discharging to limited quality waters.

(b) Any de minimis net increase determined using the following criteria:

(i) For general high quality waters, any net increase in the discharge of a regulated pollutant that does not exceed ten per cent of the wasteload allocation to maintain water quality standards calculated using total maximum daily load procedures, provided the proposed lowering of water quality does not exceed eighty per cent of the wasteload allocation to maintain water quality standards calculated using total maximum daily load procedures.

(ii) For superior high quality waters, other than lake Erie, any net increase in the discharge of a regulated pollutant that results in less than a five per cent change in the ambient water quality concentration of the receiving water as projected to occur using total maximum daily load procedures, provided the proposed lowering of water quality does not exceed the portion of the remaining available assimilative capacity specified by the director pursuant to paragraphs (C)(7)(d) and (E) of this rule.

(iii) For lake Erie any net increase in the discharge of a regulated pollutant that does not exceed ten per cent of the water body pollutant assimilative capacity.

(iv) For state resource waters, any net increase in the discharge of a regulated pollutant that results in less than a five per cent change in the ambient water quality concentration of the receiving water as projected to occur under total maximum daily load procedures, provided the application of this exclusion is limited to a single exclusion per each five-mile long segment of stream designated as state resource water, or a single exclusion per lake, reservoir or wetland designated as state resource water.

(c) Combined sewer overflow elimination or reduction projects affecting one or more water bodies where there will be a net decrease in the overall pollutant loadings discharged to surface waters of the state.

(d) Any disposal system built and operated exclusively for the treatment of volatile organic compounds at response action clean-up sites and which includes air-stripping, carbon columns, both, or equivalent treatment, and which achieves final effluent limits of five micrograms per liter or less as a thirty-day average for each individually regulated volatile organic compound.

(e) Any disposal system built and operated as a land application and controlled system as defined in paragraph (A)(10) of this rule.

(f) Any permit to install application for a project designed exclusively to restore, maintain or ensure design capacity and associated pollutant discharge levels already authorized in an effective national pollutant discharge elimination system permit.

(g) Any net increase in the discharge of a regulated pollutant resulting from a change in fuel used by the discharger, provided the discharger was capable of accommodating the new fuel on the effective date of this rule.

(h) Any application approved pursuant to the authorization for storm water discharges associated with construction activity under the national pollutant discharge elimination system permit numbers OHR100000, OHC00001 or any subsequent reissuance of these same permits.

- (i) Any application or group application approved pursuant to the general permit authorization to discharge storm water associated with industrial activity under the national pollutant discharge elimination system permit numbers OHR000002, OHG000001 or any subsequent reissuance of these same permits.
 - (j) Any application approved pursuant to the general permit authorization to discharge wastewater from coal mining activities under the national pollutant discharge elimination system permit number OHM000001 or any subsequent reissuance of this same permit.
 - (k) Any imposition of mercury effluent limitations in an NPDES permit for an existing source or new source already in existence as of October 1, 1996 where the mercury limitations are based on a variance pursuant to paragraph (D)(10) of rule 3745-33-07 of the Administrative Code.
- (2) The director may waive the requirement to install best available demonstrated control technology for new sources discharging sanitary wastewater if:
- (a) The modification, new source or national pollutant discharge elimination system application is for a project designed exclusively to restore, maintain or ensure design capacity and associated pollutant discharge levels already authorized in an effective national pollutant discharge elimination system permit; or
 - (b) The modification, new source or national pollutant discharge elimination system application is the direct and sole result of a proposed transfer of pollutant loading from an existing discharge, and the director has determined that the transfer will result in overall environmental improvement. The director's determination on this matter shall be based upon the ~~non-degradation~~ review process specified in paragraph (C) of this rule, unless otherwise excluded from such review pursuant to paragraph (D) of this rule.
- (3) The director may waive the submittal and review requirements listed in paragraphs (B)(2)(e) to (B)(2)(g), (C)(6) and (C)(8) of this rule if it is determined that:
- (a) The proposed net increase in the discharge of a regulated pollutant does not result in an increase in the ambient water quality concentration of the receiving water after mixing as projected to occur under the total maximum daily load procedures;
 - (b) Any proposed net increase in the discharge of nutrients (such as, but not limited to, phosphorus and nitrogen) or toxic substances complies with all applicable water quality standards and will not threaten environmentally sensitive areas such as downstream lakes, reservoirs, wetlands, exceptional warmwater habitats, coldwater habitats, outstanding national resource waters, outstanding high quality waters, superior high quality waters or state resource waters; and
 - (c) The requirements of paragraph (B)(2)(d) of this rule have been met and the director determines that none of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives for the design and operation of the activity are technically feasible and economically justifiable.
- (4) If the conditions set forth in this paragraph are met, the director may waive the requirements of paragraphs (C)(3)(a), (C)(3)(c) and (C)(3)(d) of this rule for activities covered by paragraph (B)(1) of this rule. The applicant must have previously submitted a general plan for wastewater disposal which included an analysis of non-degradation, minimum degradation and mitigative technique alternatives. The general plan must have been the subject of a public meeting held by the Ohio environmental protection agency after July 1, 1993 and before the effective date of this rule. The director's public notice regarding the public meeting must have followed the procedures in Chapter 3745-47 of

the Administrative Code and contained a reference to the potential for the lowering of water quality.

(5) Nothing in this rule shall prohibit the director from approving activities that lower water quality on a temporary basis whenever the director determines that an emergency exists requiring immediate action to protect public health and welfare. The director shall issue any such approval in accordance with division (C) of section 6111.06 of the Revised Code and rule 3745-47-29 of the Administrative Code.

(6) The director may waive the submittal and review requirements listed in paragraphs (B)(2)(e) to (B)(2)(g), (C)(6) and (C)(8) of this rule if the applicant is seeking a revised water quality based effluent limit based upon the results of either a site specific study of the water quality criteria or a change in the water quality criteria found in Chapter 3745-1 of the Administrative Code and the applicant demonstrates that the facility has not complied with the existing water quality based permit limit. The following conditions must be met for this waiver to apply:

(a) Any proposed net increase in the discharge of regulated pollutants complies with all applicable water quality standards and will not threaten environmentally sensitive areas such as downstream lakes, reservoirs, wetlands, exceptional warmwater habitats, coldwater habitats, outstanding national resource waters, outstanding high quality waters, superior high quality waters or state resource waters; and

(b) The requirements of paragraph (B)(2)(d) of this rule have been met and the director determines that none of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives for the design and operation of the activity are technically feasible and economically justifiable.

(E) Designation of waters.

(1) As of the effective date of this rule, all surface waters shall be designated as general high quality waters except as follows.

(a) Lake Erie is designated as a superior high quality water.

(b) Publicly owned lakes and reservoirs are designated as state resource waters.

(c) All surface waters specifically designated as state resource waters in rules 3745-1-08 to 3745-1-30 of the Administrative Code shall retain the state resource water designation until such time as the water bodies are considered under paragraph (E)(2) or (E)(3) of this rule.

(d) All surface waters of the state meeting the definition of limited quality waters are so designated, unless the water body is the source of drinking water for a public water supply, in which case it shall be considered a general high quality water for the purposes of this rule.

(2) No later than one year after the effective date of this rule, and at least once every three years thereafter, the director, in consultation with the director of the department of natural resources, shall consider available information on water bodies in Ohio and determine appropriate high quality water designations. Each determination shall consider attributes of exceptional recreational or ecological value, the national significance of the water body, and other existing and planned uses of the water body. If the director identifies any waters not properly designated, he shall public notice his intent to designate them to the appropriate category upon consideration of public comment. For all waters considered for designation as superior high quality waters the director shall also public notice his intent to reserve a portion of the remaining available pollutant assimilative capacity as specified

in paragraph (C)(7)(d) of this rule. The director shall designate outstanding national resource waters, outstanding high quality waters and superior high quality waters, and rescind designations of state resource waters, in rules 3745-1-08 to 3745-1-30 of the Administrative Code by rule in accordance with Chapter 119. of the Revised Code.

(3) A person adversely affected by the high quality water designation of a water body pursuant to paragraph (E)(1) or (E)(2) of this rule may petition the director to revise that designation. Any such petition shall detail the basis for the petition and contain, at a minimum, new relevant and factual information, or relevant and factual information not previously available to the director at the time of the designation described in paragraph (E)(1) or (E)(2) of this rule. The petition must contain sufficient information, or such additional information as the director may request, to justify a decision by the director to either revise or retain the designation under paragraph (E)(1) or (E)(2) of this rule. Within three months of receiving a petition containing complete and adequate information, or within such longer time as the director and the petitioner may agree, the director shall either approve or propose to deny the petition in accordance with Chapter 119. of the Revised Code. The director shall subsequently make appropriate revisions to the high quality water designation of the water body in rules 3745-1-08 to 3745-1-32 of the Administrative Code by rule in accordance with Chapter 119. of the Revised Code.

(F) Special provisions for bioaccumulative chemicals of concern in the lake Erie drainage basin.

The following special provisions are applicable to the discharge or release to the environment of any bioaccumulative chemical of concern in the lake Erie drainage basin. Unless otherwise noted, these requirements shall apply in addition to the provisions found in paragraphs (A) to (E) of this rule.

(1) In lieu of the requirements of paragraph (B)(1) of this rule, any significant lowering of water quality as described in paragraph (F)(2) of this rule shall require the applicant to submit the information required by paragraph (B)(2) of this rule and to complete the demonstration required by paragraph (F)(3) of this rule. The director shall establish conditions in the control document that meet the requirements of paragraph (F)(4) of this rule.

(2) Significant lowering of water quality.

(a) A significant lowering of water quality occurs when there is a new or increased loading of any bioaccumulative chemical of concern from any regulated existing or new facility, either point source or nonpoint source for which there is a control document or reviewable action, as a result of any activity including, but not limited to:

(i) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified control document is required;

(ii) Modification of an existing regulated facility operating under a current control document such that the production capacity of the facility is increased;

(iii) Addition of a new source of untreated or pretreated effluent containing or expected to contain any bioaccumulative chemical of concern to an existing wastewater treatment works, whether public or private;

(iv) A request for an increased limit in an applicable control document; and

(v) Other deliberate activities that, based on the information available, could be reasonably expected to result in an increased loading of any bioaccumulative chemical of concern to any waters of the Great Lakes system.

(b) Notwithstanding the above, changes in loadings of any bioaccumulative chemical of concern within the existing capacity and processes that are covered by the existing applicable control document, are not subject to an ~~antidegradation~~ review. These changes include, but are not limited to:

- (i) Normal operational variability including, but not limited to, intermittent increased loadings related to wet weather conditions;
- (ii) Changes in intake water pollutants;
- (iii) Increasing the production hours of the facility, (e.g., adding a second shift), provided production hours do not exceed those described in, or used to derive, the existing control document;
- (iv) Increasing the rate of production, provided production rates do not exceed those described in, or used to derive, the existing control document;
- (v) Discharges of quantities of a bioaccumulative chemical of concern in the intake water at a facility proposing a new or increased discharge, provided that the new or increased discharge is not expected to result in a net increase in the total load of the bioaccumulative chemical of concern in the receiving water body;
- (vi) Increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes such as septage and holding tank wastes by a POTW unless, for a bioaccumulative chemical of concern, there is increased loading due to the collection of wastewater from a significant industrial user and, based on the industry's raw materials and processes, the wastewater is expected to have quantifiable concentrations of the bioaccumulative chemical of concern significantly above levels typically associated with domestic wastewater and non-industrial stormwater;
- (vii) Increased discharge of a bioaccumulative chemical of concern due to implementation of controls on wet weather-related flows, including, but not limited to, combined sewer overflows and industrial stormwater; and
- (viii) Increased discharges of a bioaccumulative chemical of concern resulting from a change in fuel used by the discharger, provided that the discharger was capable of accommodating the new fuel on the effective date of this rule.

(c) Also excluded from an ~~antidegradation~~ review are new effluent limits based on improved monitoring data or new water quality criteria or values that are not a result of changes in pollutant loading.

(d) Also excluded from the ~~antidegradation~~ submittal and review requirements listed in paragraphs (B)(2)(c) to (B)(2)(g), (C)(6) and (C)(8) of this rule is any imposition of mercury effluent limitations in an NPDES permit for an existing source or new source already in existence as of October 1, 1996, where the mercury effluent limitations are based on a variance pursuant to paragraph (D)(10) of rule 3745-33-07 of the Administrative Code.

(3) ~~Antidegradation~~ demonstration.

Any entity seeking to significantly lower water quality for a bioaccumulative chemical of concern, as defined in paragraph (F)(2) of this rule, in a limited quality water or high quality water must, in addition to the requirement in paragraph (B)(2) of this rule, submit an ~~antidegradation~~ demonstration for consideration by the director pursuant to the review requirements of this paragraph and paragraph (C) of this rule. The ~~antidegradation~~ demonstration shall include the following:

(a) Pollution prevention alternatives analysis. Identify any cost-effective pollution

prevention alternatives and techniques that are available to the entity, that would eliminate or significantly reduce the loadings of bioaccumulative chemical(s) of concern; and

(b) Alternative or enhanced treatment analysis. Identify alternative or enhanced treatment techniques that are available to the entity that would eliminate the lowering of water quality and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

(4) For limited quality waters and high quality waters, the director shall ensure that no action resulting in a lowering of water quality occurs unless an ~~antidegradation~~ demonstration has been completed pursuant to paragraphs (B)(2) and (F)(3) of this rule and the information thus provided is determined by the director pursuant paragraph (C) of this rule to adequately support the lowering of water quality.

(a) The director shall establish conditions in the control document applicable to the regulated facility that prohibit the regulated facility from undertaking any deliberate action, such that there would be an increase in the rate of mass loading of any bioaccumulative chemical of concern, unless an ~~antidegradation~~ demonstration is provided to the director and approved pursuant to paragraph (C) of this rule prior to commencement of the action. Imposition of limits due to improved monitoring data or new water quality criteria or values, or changes in loadings of any bioaccumulative chemical of concern within the existing capacity and processes that are covered by the existing applicable control document, are not subject to an ~~antidegradation~~ review.

(b) For bioaccumulative chemicals of concern known or believed to be present in a discharge, from a point or nonpoint source, a monitoring requirement shall be included in the control document. The control document shall also include a provision requiring the source to notify the director of any increased loadings that would be subject to the provisions of the paragraph (F)(2) of this rule and which have not received approval from the director under the conditions specified in this rule. Upon notification, the director shall require actions as necessary to reduce or eliminate the increased loading if the increase is subject to the provisions of the paragraph (F)(2) of this rule. Requirements to reduce or eliminate the increased loading imposed by the director pursuant to this paragraph shall apply unless or until the director approves the increased loadings under the provisions specified in this rule.

(c) Fact sheets prepared pursuant to [40 C.F.R. 124.8](#) and [124.56](#) shall reflect any conditions developed under paragraph (F) of this rule and included in a permit.

Table 5-1. Best available demonstrated control technology for new sources discharging sanitary wastewater.

Parameter	Thirty-day Seven-day		Maximum/Minimum Limit
	Limit	Limit	
CBOD(5)	10 mg/l	15 mg/l	n/a
Total suspended solids	12 mg/l	18 mg/l	n/a
Ammonia (summer)	1.0 mg/l	1.5 mg/l	n/a
(Winter)	3.0 mg/l	4.5 mg/l	

Dissolved oxygen		n/a		n/a		6.0 mg/l (minimum)
Total residual chlorine		n/a		n/a		0.038 mg/l (maximum)

HISTORY: 2000-2001 OMR 1687 (A), eff. 4-17-01.
 1997-98 OMR 2343 (A), eff. 5-1-98; 1997-98 OMR 794 (A), eff. 10-31-97; 1996-97 OMR 72 (R-E), eff. 10-1-96; 1984-85 OMR 835 (E), eff. 4-4-85; 1984-85 OMR 835 (R), eff. 4-4-85; 1977-78 OMR 3-977 (E), eff. 2-14-78; 1977-78 OMR 3-977 (R), eff. 2-14-78; prior EP-1-05

RC 119.032 rule review date(s): 3-1-02

CROSS REFERENCES

RC 6111.041, Water quality standards; hearings

NOTES OF DECISIONS AND OPINIONS

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1. In general

When making determinations regarding proposed activities that lower water quality, the Director of the Environmental Protection Agency must consider thirteen factors, including the cost-effectiveness and technical feasibility of nondegradation alternatives, the reliability of the preferred alternative, and the condition of the local economy. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

Evidence supported social and economic justification for issuance by state Environmental Protection Agency (EPA) of permits to construct wastewater treatment facility, where EPA demonstrated need to take action to alleviate unsanitary conditions in area around lake, county proposed four site options, three types of collection systems, and eleven types of treatment methods, and method chosen by EPA, while not zero discharge, was protective of water quality of lake and creek. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

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The Ohio EPA puts OAC 3745-1-05 into effect in accordance with and under the guidance of the Ohio EPA anti-degradation policy document, which provides an objective methodology for determining the most stringent effluent limitation which would be applicable to a waste water discharge by using four different methods labelled A through D to establish the appropriate limitations; the method which provides the most stringent effluent limitations would be the method applicable to any particular discharge. *Columbus & Franklin County Metropolitan Park Dist v Shank*, EBR 251901 et al (4-5-90).

2. Degradation defined

The "degradation" of high quality waters within the meaning of OAC 3745-1-05 occurs whenever the permitted activity increases the amount of pollutants. *Columbus & Franklin Cty. Metro. Park Dist. v. Shank* (Ohio 1992) 65 Ohio St.3d 86, 600 N.E.2d 1042.

3. New sources of pollution, treatment requirement

The most stringent statutory and regulatory controls for waste treatment to which the OAC 3745-1-05 refers constitute that level of technology applicable to new sources of pollution which achieves the greatest reduction of pollutants; where the United States environmental protection agency has not prescribed an effluent limitation for a new source category, the Ohio director of environmental protection shall, pursuant to OAC 3745-31-05(D), require as a condition of the permit the greatest effluent reduction achievable through the best available demonstrated control technology, processes, operating methods or other alternatives. *Columbus & Franklin Cty. Metro. Park Dist. v. Shank* (Ohio 1992) 65 Ohio St.3d 86, 600 N.E.2d 1042.

4. -- New sources, notice and hearing for permits

The public hearing requirement to which OAC 3745-1-05 refers must be satisfied before a permit may be issued to install a new source of pollution pursuant to OAC 3745-31-02(A). *Columbus & Franklin Cty. Metro. Park Dist. v. Shank* (Ohio 1992) 65 Ohio St.3d 86, 600 N.E.2d 1042.

5. -- In general, notice and hearing for permits

Under OAC 3745-1-05, the Ohio director of environmental protection may not issue a permit authorizing an activity that would degrade waters which exceed water quality standards unless (1) he has complied with the public notice and intergovernmental coordination requirements of Parts 25 and 29, Title 40, CFR; (2) he has conducted a public hearing to consider the technical, economic and social criteria provided in Sections 1311 and 1312, Title 33, USC; and (3) as a result of the public hearing, he has chosen to allow lower water quality in the receiving stream; when this determination has been made, the degradation of water quality must be kept to an absolute minimum by the employment of the most stringent statutory and regulatory controls for waste treatment and under no circumstances may such degradation interfere with or become injurious to any existing or planned uses of the receiving waters. *Columbus & Franklin Cty. Metro. Park Dist. v. Shank* (Ohio 1992) 65 Ohio St.3d 86, 600 N.E.2d 1042.

An applicant for a wastewater treatment plant permit does not acquire a vested right simply by applying for a permit. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

~~Antidegradation~~ rule was effective when permits to build wastewater treatment plant were issued, even though rule had not been approved by federal Environmental Protection Agency (EPA), as grandfather provision in rule promulgated by federal EPA provided that newer ~~antidegradation~~ rule became effective for Clean Water Act purposes when it was adopted by state. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

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6. -- Adequacy of notice, notice and hearing for permits

Public notice of ~~antidegradation~~ hearing held prior to grant of permit to construct wastewater treatment facility provided by Environmental Protection Agency (EPA) complied with public notice rule and provided ample notice to public, where meeting was publicized as ~~antidegradation~~ hearing, and residents knew purpose of hearing, wrote letters, and presented relevant testimony. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

Change in location of ~~antidegradation~~ hearing did not violate 45-day notice provision in administrative code, where residents who opposed grant of permits for wastewater treatment facility themselves requested change so that larger audience could be accommodated, Environmental Protection Agency (EPA) sent out notices by mail,

contacted attorney for residents, and issued two public notices in local newspaper informing public of changed location. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

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A public notice that refers only to possible degradation of "an unnamed tributary of Blacklick Creek" resulting from a permit to install is inadequate notice where it does not mention that the tributary runs into Blacklick Creek, which is an exceptional warmwater habitat, less than 400 feet from the discharge point in issue. *Columbus v Schregardus*, EBR 253036+ (3-12-96).

7. -- Review procedure, notice and hearing for permits

~~antidegradation~~ rule in effect when county's application for wastewater treatment plant was reviewed, not when it was originally filed, governed issuance of permit authorizing construction of wastewater treatment project, as county did not acquire vested right when it applied for permit, and new application was made after new rule went into effect. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

Issuance of permits to build wastewater treatment facility was lawful, despite opponent's contention that because lake and creek were in state park they must automatically be classified as outstanding national resource waters (ONRW), as regulation did not automatically classify all waters in state parks as ONRW. *Save the Lake v. Schregardus* (Ohio App. 10 Dist. 2001) 141 Ohio App.3d 530, 752 N.E.2d 295.

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The fact that the Ohio EPA did not itself perform a full, comprehensive assessment of the impact of effluent from a wastewater treatment plant on a creek as part of the review of an application for a permit to install does not affect the validity of the EPA decision where the evidence adduced at the hearing as to generally accepted QUAL 2E computer modeling assessment technique demonstrates the facility will meet the appropriate standards. Columbus & Franklin County Metropolitan Park Dist v Shank, EBR 251901 et al (4-5-90).

8. Wetlands

Before placing fill materials in a wetland, an applicant must first obtain a "section 401" certification from the Ohio EPA and a "section 404" permit from the U.S. Army Corps of Engineers; furthermore, in evaluating an application for a 401 certification, the Director shall deny it if the project will prevent or interfere with the attainment or maintenance of applicable water standards or result in a violation of certain provisions of the Federal Water Pollution Control Act, and the Director may also deny the certification if discharge of fill will result in adverse long or short term impact on water quality. Bartholow Auto Wrecking, Inc v Schregardus, EBR 303162 (8-22-95).

9. -- Not by rule, regulated pollutant

Because BOD (biochemical oxygen demand) and DO (dissolved oxygen) are so dependent on stream temperature and flow, it would be impossible for the Ohio EPA to promulgate a rule specifically limiting BOD in effluent which could be applied uniformly to all NPDES permits: BOD limitations are specific to the effluent that is being permitted and to the particular stream stretch into which the effluent will be discharged. Interstate Properties v Schregardus, ERAC 773862 (2-4-99).

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Section Title: 901:10-6-04 Public Meetings (Integrated)

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,

Terms: BMP, NPDES, enforcement, inspection, administrative, public notification, public participation

Source: Integrated Document

901:10-6-04 Public meetings

(A) Not later than thirty days after public notice of a draft permit, any person may file a request for a public meeting. This paragraph does not apply to amended draft actions or to an NPDES permit application where an ~~antidegradation~~ review is required.

(B) Public meetings and ~~antidegradation~~ review and NPDES permits.

(1) Within ninety days of receipt of the application for any permit to install with an

NPDES permit, the director shall hold a public meeting where an ~~antidegradation~~ review is required for any category three wetland, a designated outstanding national resource water, outstanding high quality water, state resource water or superior high quality water. The public meeting shall be for the purpose of evaluating issues related to lower water quality.

(2) Within ninety days of receipt of the application, the director shall hold a public meeting for any permit to install application and any NPDES permit application where the application indicates that an ~~antidegradation~~ review is required for general high quality waters other than category three wetlands and for limited quality waters, and the director also determines that there is significant public interest. This hearing is held concurrently with the draft permit.

(C) If the director determines that there is significant public interest in a draft permit to install, permit to operate, in the ~~antidegradation~~ review described in paragraph (B)(2) of this rule or where required to do so by statute or rule, the director shall hold one public meeting in the county where the facility is located or in a contiguous county. In consideration of an application for issuance of a permit, the director may hold one public meeting prior to issuance of a permit. When allowed by the ~~antidegradation~~ policy, the director shall hold the public meeting on ~~antidegradation~~ issues concurrently with any public meeting held for the draft permit.

[Comment: The director may take other, reasonable steps to inform the public about draft permits, including fact sheets, brochures or other informal sessions with the public and the permittee.]

[Comment: The director may include representatives from other government departments, offices and agencies to participate in public meetings and otherwise invite these persons to provide pertinent information to the public.]

(D) Significant public interest means statements made in writing by twenty or more persons expressing interest in the draft permit before the director or in the ~~antidegradation~~ review and requesting a public meeting. Significant public interest may also include expressed interest by one or more public officials.

(E) If the director determines that there is significant public interest within the meaning of paragraph (D) of this rule, then public notice of the public meeting shall be published at least thirty days prior to the public meeting in a newspaper of general circulation and shall include:

(1) The address and telephone number of the office at the Ohio department of agriculture where department files and records pertaining to the application are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list.

(2) The name and address of the applicant.

(3) The location of the facility and a short description of any discharge, if applicable, indicating whether any discharge is a new or existing discharge.

(4) The date of issuance of the notice of the draft permit.

(5) The time, date, and location of the public meeting.

(6) A concise statement of the issues raised by those requesting a public meeting.

(7) A statement:

(a) That any interested person may appear and present written and/or oral statements, in person or by a representative.

(b) That the purpose of the meeting is to obtain additional information that will be limited to the criteria that are applicable to the permit application that is the subject of the public meeting and will be considered by the director prior to the director's taking final action on the draft permit under consideration.

(F) In any public meeting, the director may appoint a presiding officer to conduct the meeting. The officer shall state at the beginning of the meeting the manner in which the meeting will be conducted, time limits for testifying, and any other procedures for conducting the meeting. Procedures and time limits may vary according to the number of people wishing to testify, the time the meeting starts, weather conditions and other situations affecting the length of the meeting. On the date and at the time and place specified in the notice, the public meeting shall be held at which any person:

- (1) May appear and be heard in person or by a representative, or both;
- (2) May present statements orally or in writing, or both.

(G) Any person requesting time to make an oral comment at the meeting must register prior to the beginning of the meeting. Persons shall be called to provide a statement for the record in the order of registration, unless the presiding officer determines otherwise.

(H) Information presented by any person shall be limited to the criteria and information that are applicable to the permit application that is the subject of the public meeting. The officer may rule out of order any person who does not address comments to the matter that is the subject of the public meeting.

(I) Persons attending the public meeting are authorized to tape or videotape the proceedings provided the following requirements are met:

- (1) The hearing officer is notified at least twenty-four hours prior to the start of the public meeting unless prior notice is waived by the hearing officer; and
- (2) The public meeting is not interrupted or disturbed.

(J) A transcript, recording or other complete record shall be made of the public meeting. Statements presented at a public meeting held pursuant to this rule shall be considered by the director, who may issue a final permit, as permitted by law. No final permit shall be issued until after the director has considered the report of the presiding officer. The report shall briefly describe and respond to all significant comments on the draft permit or, in the case of an NPDES permit with ~~antidegradation~~ applicability, the permit application, raised during the public comment period, including the public meeting.

HISTORY: 2001-02 OMR 2976 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

RC 903.09, Draft permits; public meetings and notice; denial of permits

RC 903.10, Rulemaking powers; best management practices

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,
Terms: BMP, NPDES, enforcement, inspection, administrative, compliance,
notification, public notification
Source: Integrated Document

Chapter 901:10-6 NPDES Inspection: Notice, Public Meetings

901:10-6-01 Notice

(A) Notice by publication.

(1) Notices in general. All notices required or authorized by section 903.09 the Revised Code shall be published once in a newspaper having general circulation in the county in which the facility is located or proposed to be located. Publication shall be done at least thirty days prior to a public meeting, provided that publication shall be done at least forty-five days prior to a public meeting for any draft permit to install or draft NPDES permit subject to an ~~antidegradation~~ review. Public notice is complete upon publication.

[Comment: Public notice will be given for any draft general permit to be issued by the director. Since general permits are written to cover categories of discharges within a geographic or political area, the director may give one or more notices in newspapers of general circulation for those geographic or political areas identified in the general permit.]

(2) Additional requirements for NPDES information. The purpose of public notice for a draft permit to install and a draft NPDES permit for which an ~~antidegradation~~ review is applicable shall be: to inform other potentially affected persons; to allow for inspection and review of the applications; to indicate whether any of the exclusions or waivers within the ~~antidegradation~~ rules apply to the applications; to instruct interested persons to contact the director within thirty days if they want to be on the interested parties mailing list as described in rule 901:10-6-05 of the Administrative Code for that particular permit to install or NPDES permit application; and to advertise the date, time, and place of any public meeting required under division (C) of section 903.09 of the Revised Code.

(3) The department shall give public notice of the issuance of a review compliance certificate issued pursuant to division (F) of section 903.04 of the Revised Code only to persons who own property that is contiguous to the facility for which the review compliance certificate is issued.

(4) The director shall publish notice of the issuance of a final permit once in a newspaper of general circulation in the county in which the facility is located.

(B) Notice by mail.

(1) The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the board of county commissioners of the county, the board of township trustees of the township, the local board of health and the local soil and water conservation district in which the facility is located or proposed to be located. The director shall also notify owners or operators of public water systems as that term is

defined in section 6109.01 of the Revised Code that have a surface water intake structure located within ten miles downstream of the facility or proposed facility described in the draft permit.

(2) In addition, if an ~~antidegradation~~ review of an NPDES permit application indicates the potential to lower water quality, the director shall provide notice by mail to the Ohio department of natural resources, the United States fish and wildlife service, any affected local areawide planning agencies and the Ohio department of development.

(3) Notices shall be mailed by certified mail, return receipt requested, to the person subject thereto. Notices shall state the time and method by which the applicant or permit holder may request public meeting. A statement as to when a final permit will be issued may accompany draft permits.

(a) If a draft permit is issued with an effective date and the permit is later signed by the director without being changed further, the department need not, at the time of entry, provide notice or a copy of the permit to the person subject thereto.

(b) If a draft permit is issued without an effective date, and the department later assigns an effective date without changing the action further, the department shall mail notice to the person subject thereto informing the person of the effective date.

(4) If the applicable law grants a right to appeal the final permit or order of the director to the environmental review appeals commission, mailings required by this paragraph shall be accompanied by a notice stating the time and method by which the appeal must be filed.

(C) Failure of the director to provide notice or a public meeting shall invalidate a permit only if the failure is raised by and was relied upon to the detriment of a person that is entitled to appeal the permit. Notice of a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.

HISTORY: 2001-02 OMR 2974 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

RC 903.04, Enforcement powers transferred from environmental protection director to agriculture director; effect on existing permits; review compliance certificates

RC 903.09, Draft permits; public meetings and notice; denial of permits

RC 903.10, Rulemaking powers; best management practices

Citation: Title 901, Division 901:10, Chapter 6

Jurisdiction: Ohio

Document Date: July 2, 2002

Page Count: 2

Section Title: 901:10-6-02 Contents of Public Notices (Integrated)

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,

Terms: BMP, NPDES, operating, enforcement, inspection, compliance, public notification, application, applicability, notification

Source: Integrated Document

901:10-6-02 Contents of public notices

(A) This rule applies to public notices for permits to install, permits to operate, and NPDES permits. In addition, this rule applies to public notices for the receipt of applications for NPDES permits in order to notify the public of an applicable ~~≤≤ antidegradation ≥≥~~ review under section 6111.12 of the Revised Code. Public notices shall include the following information:

- (1) The name, address and telephone number of the office of the Ohio department of agriculture where department files and records pertaining to the permit application are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list provided for in rule 901:10-6-05 of the Administrative Code
- (2) The name and address of the applicant.
- (3) A brief description of the applicant's activities or operations.
- (4) The location of the facility and a short description of any discharge indicating whether any discharge is a new or an existing discharge.
- (5) A concise statement of the draft permit.
- (6) A statement:
 - (a) That any person may submit a written statement within thirty days of appearance of public notice in a newspaper in the affected county and that any person has a right to provide a statement for the record at the public meeting; and
 - (b) That if significant public interest is shown, one public meeting shall be held on a draft permit, prior to issuance of any final permit.
- (7) In addition, if the public notice is for an NPDES permit application or a draft permit on an NPDES permit the public notice shall contain the following information:
 - (a) A statement summarizing the receipt of an application for an NPDES permit where an ~~≤≤ antidegradation ≥≥~~ review is required;
 - (b) The date of issuance of the draft permit; and
 - (c) A statement on the applicability of an ~~≤≤ antidegradation ≥≥~~ review in section 6111.12 of the Revised Code to indicate whether waivers or exclusions of the policy apply or to indicate an evaluation of issues related to lower water quality.
 - (d) A statement that the draft permit shall become final on an effective date or event specified therein, unless:
 - (i) A public meeting is requested;
 - (ii) The director amends or withdraws the draft permit; or
 - (iii) The draft NPDES permit has been disapproved by the United States environmental protection agency in accordance with rule 901:10-3-06 of the Administrative Code.
- (B) Notice of NPDES permit applications to government agencies. The notice required by paragraph (A) of rule 901:10-6-01 of the Administrative Code to be given to state and governmental agencies shall include:
 - (1) The information required in this rule and may include a copy of such public notices.
 - (2) A statement that an affected state or agency may submit written recommendations to the director and to the regional administrator of the United States environmental

protection agency which the director may incorporate into the NPDES permit if issued, and that if the recommendation of the state or agency is not incorporated in the final permit, a written explanation of the director's reasons for not accepting the recommendation will be provided for that state or agency and the regional administrator of the United States environmental protection agency.

(3) A copy of the fact sheet and a statement that a copy of the application for an NPDES permit or of the draft NPDES permit, including all ancillary papers, will be provided upon request.

(C) The notice required by paragraph (B) of this rule shall also be given, when applicable, to:

(1) Any agency responsible for an areawide waste treatment management plan pursuant to division (B) of section 208 of the Federal Water Pollution Control Act.

(2) Any agency responsible for the preparation of a plan pursuant to an approved continuing planning process under division (E) of section 303 of the Federal Water Pollution Control Act.

HISTORY: 2001-02 OMR 2975 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

RC 903.09, Draft permits; public meetings and notice; denial of permits

RC 903.10, Rulemaking powers; best management practices

Citation: Title 3745, Chapter 33

Jurisdiction: Ohio

Document Date: October 31, 1997

Page Count: 6

Section Title: 3745-33-05 Authorized Discharge Levels (Integrated)

Subject water, discharge, permitting, NPDES, point source, administrative,

Terms: effluent limitation, water quality

Source: Integrated Document

3745-33-05 Authorized discharge levels

(A) Final limitations.

(1) Except as provided by paragraph (F) of this rule, for each point source from which pollutants are discharged, the director shall determine and specify in the permit the maximum levels of pollutants that may be discharged to ensure compliance with:

(a) Applicable water quality standards; and

(b) Applicable effluent limitations, which shall be the national effluent limitations and guidelines adopted by the administrator pursuant to sections 301 and 302 of the act, and national standards of performance for new sources pursuant to section 306 of the act, and national toxic and pretreatment effluent limitations pursuant to section 307 of the act; and

(c) Standards which prohibit significant degradation of the waters of the state, if the point source was installed or should have been installed pursuant to a permit to install under Chapter 3745-31 of the Administrative Code; and

(d) Any more stringent requirements necessary to comply with a plan for area-wide waste treatment management, approved pursuant to section 208(b) of the act; and

(e) Any more stringent limitations required to comply with any other state or federal law or regulation.

(2) Prior to promulgation of regulations by the administrator setting forth effluent standards or limitations, or standards of performance pursuant to the act, the director may impose standards, limitations, or conditions in an Ohio NPDES permit necessary to ensure compliance with Chapter 6111. of the Revised Code and the act.

(3) A discharge shall be deemed to be in compliance with an effluent limitation based upon the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury specified in rule 3745-1-34 of the Administrative Code if:

(a) The discharge does not exceed the effluent limitation established in the NPDES permit based upon the 0.012 ug/l thirty-day average criterion; or

(b) The permittee demonstrates to the director's satisfaction that the concentration of methyl-mercury in the edible portion of consumed species exposed to the discharge does not exceed 1.0 mg/kg. Any discharger seeking to make a demonstration pursuant to paragraph (A)(3)(b) of this rule must include a notification of its intent to perform such a study in the monthly operating report that reports any exceedance of a mercury effluent limit based on the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury. Such demonstration shall be based upon results of a fish tissue study, conducted in accordance with a methodology approved by the director. The results of the fish tissue study must be submitted to the director for review and approval within one hundred and twenty days of the discharge, or such additional period of time as specified by the director. Provided that the study is submitted within the time allowed, the determination of whether or not the discharger is in compliance with the applicable effluent limitation will be made when the director approves or disapproves the demonstration. If the arithmetic mean of all representative samples of any species exceeds 1.0 mg/kg methyl-mercury, the director shall disapprove the demonstration and the discharger shall implement a strategy to reduce sources of mercury. This rule does not apply to any mercury effluent limitation other than the thirty-day average effluent limitation based upon the 0.012 ug/l thirty-day average water quality criterion for total recoverable mercury specified in rule 3745-1-34 of the Administrative Code.

(B) Interim limitations. Except as provided in paragraph (D) of this rule, the director may establish the maximum levels of pollutants which may be discharged during the period of the compliance program.

(C) Characterization of discharge levels.

(1) Concentration and loading limitations. Authorized levels of pollutants that may be discharged shall be stated to the extent possible given the nature of the pollutant in terms of the volume, weight in pounds per day (except for those pollutants not expressible by weight), duration, frequency and, where appropriate, concentration (except for those pollutants not expressible by concentration) of each pollutant discharge. The director shall specify average and maximum daily quantitative limitations, where appropriate. Whenever a water quality-based effluent limitation (WQBEL) is developed under

Chapter 3745-2 of the Administrative Code, the WQBEL shall be expressed as both a concentration value and a corresponding mass loading limit, except as provided in paragraph (C)(1)(d) of this rule. Limits for chronic whole effluent toxicity may be expressed in terms of an average of multiple toxicity tests.

(a) Both mass and concentration limits must be based on the same permit averaging periods, except as allowed under paragraph (C)(1)(d) of this rule.

(b) The mass loading limits shall be calculated using effluent flow rates that are consistent with those used in establishing the WQBELs that are expressed as concentrations, except as allowed under paragraphs (C)(1)(c) and (C)(1)(d) of this rule.

(c) For facilities that, during wet weather conditions, are subject to flows that exceed dry weather treatment facility design conditions, the director may, upon review of supporting information, authorize mass loading limits based on a more appropriate flow rate.

(d) For facilities utilizing water conservation and/or flow reduction practices, the director may specify more appropriate mass and concentration limits based on wasteload allocation results as developed under Chapter 3745-2 of the Administrative Code.

(2) Metals. All permit effluent limitations, standards, or prohibitions for a metal must be expressed in terms of "total recoverable metal" as defined in 40 C.F.R. 136 unless:

(a) An applicable metal effluent standard or limitation has been established under the act in the dissolved or valent or total form;

(b) In establishing permit limitations on a case-by-case basis under [40 C.F.R. 125.3](#), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(3) Ambient sampling. When a site-specific dissolved metals translator is used in the calculation of effluent limitations, the NPDES permit shall require the permittee to conduct ambient sampling to confirm the continued validity of the site-specific translator.

(a) The ambient sampling shall be conducted once during the term of the Ohio NPDES permit using procedures specified in paragraph (G) of rule 3745-2-04 of the Administrative Code.

(b) If the director determines that adequate site-specific dissolved metals translator data exists, the ambient sampling may not be required.

(D) Present discharge levels. The director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either final limitations or interim limitations at the levels indicated by the applicant as its current maximum levels of discharge, even where limitations to such discharge levels are not essential to avoid violation of either applicable water quality standards or effluent standards.

(E) Antibacksliding.

(1) Ohio NPDES permits may not be renewed, reissued or modified to contain effluent limitations that are less stringent than the comparable final effluent limitations in the previous permit except when:

(a) Material and substantial additions or alterations to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(b) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance;

- (c) For technology-based limitations, the director determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;
- (d) A less stringent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy provided that the revised limitation is a WQBEL limitation or is a limitation based on effluent limitation guidelines that was formerly based on best professional judgement;
- (e) The permittee has received a modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n) or 316(a) of the act or rule 3745-33-04 of the Administrative Code;
- (f) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed, reissued, or modified permit may reflect the level of pollution control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit renewal, reissuance or modification; or
- (g) For water quality-based effluent limitations,
 - (i) If the water quality standard is attained and applicable ~~antidegradation~~ requirements of rule 3745-1-05 of the Administrative Code are met; or
 - (ii) If the water quality standard is not attained and the cumulative effect of changing wasteload allocations or total maximum daily loads will assure attainment of the water quality standard or the designated use not being attained is removed, and applicable ~~antidegradation~~ requirements of rule 3745-1-05 of the Administrative Code are met.
- (2) Any increase in authorized pollutant loadings shall be subject to any applicable ~~antidegradation~~ requirements contained in rule 3745-1-05 of the Administrative Code.
- (3) A permit shall not be renewed, reissued or modified to contain limitations that are less stringent than the applicable effluent guidelines at the time the permit is renewed, reissued or modified, or to contain effluent limits that would result in a violation of water quality standards contained in Chapter 3745-1 of the Administrative Code.
- (F) Schedules of compliance.
 - (1) If construction of a point source commenced after March 23, 1997 for which an initial Ohio NPDES permit containing a water quality-based effluent limitation is issued on or after March 23, 1997, the permittee shall comply with such a discharge limitation upon commencement of the discharge.
 - (2) The director may grant a point source an Ohio NPDES permit with a satisfactory schedule of compliance, which shall become a condition of the NPDES permit, if he determines that any of the following conditions apply:
 - (a) The permit is reissued or modified to contain a new or more restrictive WQBEL and the discharger cannot meet the WQBEL, or there is not enough information to determine whether the discharger can meet the WQBEL; or
 - (b) A schedule is necessary under paragraph (C) of rule 3745-33-07 of the Administrative Code; or
 - (c) Authorized discharge levels specified in paragraphs (A)(1)(d) and (A)(1)(e) of this rule cannot be met; or
 - (d) A schedule is necessary in order for the submission of other information, reports, or documents, or to perform activities, relative to special conditions in the permit consistent with provisions of the act or federal rules promulgated thereunder, or Chapter 6111. of the Revised Code or rules adopted thereunder.

- (3) A satisfactory schedule of compliance shall include the following elements:
- (a) An enforceable schedule of steps and dates for their achievement, no two of which shall be separated by more than twelve months, to be taken by the applicant that will bring the discharge into compliance with authorized discharge levels at the earliest possible date but no later than those dates necessary to achieve the objectives set forth in the act;
 - (b) Such additional steps as the director shall specify, including interim measures, to eliminate any danger or serious threat of danger to human health and to minimize any deleterious effect on the environment. Such measures may include interim treatment techniques, reduced levels of operations, or the imposition of a connection ban;
 - (c) When the compliance schedule goes beyond the term of the permit, an interim effluent limit or other appropriate requirements and schedules effective upon the expiration date; these shall also be addressed in the permit fact sheet. The administrative record for the permit shall reflect the final limit, or requirements for developing limits and other appropriate requirements and schedules, and its compliance date; and
 - (d) A reasonable period of time, up to five years from the date of permit renewal or modification, for the permittee to comply with a WQBEL for whole effluent toxicity or a WQBEL for a pollutant excluding those listed in table 33-1 of rule 3745-1-33 of the Administrative Code. When the permit is renewed or modified to contain a new or more restrictive WQBEL, the WQBEL must be based on a whole effluent toxicity level contained in rule 3745-2-09 of the Administrative Code or on a criterion or tier II value adopted in, or derived pursuant to, Chapter 3745-1 of the Administrative Code to qualify for a compliance schedule under this rule except as provided for below.
 - (i) If construction of a point source commenced on or before March 23, 1997 and a renewed or modified permit includes a limit based upon a tier II value, the permit may provide a reasonable period of time, up to two years, in which to provide additional studies necessary to develop a tier I criterion or to modify the tier II value. In such cases, the permit must require compliance with the tier II limitation within a reasonable period of time, no later than five years after permit renewal or modification, and contain a reopener clause.
 - (ii) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies which demonstrate, to the director's satisfaction, that a revised limit is appropriate. Such a revised limit may be incorporated through a permit modification and a reasonable time period, up to five years, may be allowed for compliance. If incorporated prior to the compliance date of the original tier II limitation, any such revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of paragraph (E) of this rule.
 - (iii) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the director may provide a reasonable additional period of time, up to five years, for the permittee to achieve compliance with the original effluent limitation.
 - (iv) Where a permit is modified to include new or more stringent limitations on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with paragraph (F)(1)(c) of this rule.
- (4) Where necessary to achieve compliance with standards for whole effluent toxicity, the compliance schedule may include specific requirements to conduct a toxicity reduction

evaluation (TRE). If a properly conducted TRE fails to identify the source, cause or treatability of the toxicant(s), the director may modify the permit and extend the schedule not to exceed five years in total, to include requirements for additional investigation and/or special control measures.

(5) No later than fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with interim or final requirements.

HISTORY: 1997-98 OMR 870 (A), eff. 10-31-97
1989-90 OMR 875 (A), eff. 2-28-90; prior EP-31-05

RC 119.032 rule review date: 3-1-02

Note: Effective 10-31-97, 3745-33-05 contains provisions of former 3745-33-04; see 3745-33-08 for provisions of former 3745-33-05.

CROSS REFERENCES

RC 6111.03, Powers of director of environmental protection

LAW REVIEW AND JOURNAL COMMENTARIES

Oil Spill Reporting Requirements, David L. Yaussy. 3 Health L J Ohio 113 (May/ June 1992).

NOTES OF DECISIONS AND OPINIONS

Bioaccumulation{1}
Setting limits{2}

{1}. Bioaccumulation

Although the proper procedure in issuing a national pollutant discharge elimination system (NPDES) permit is to draft the parameters to be included in the NPDES permit, issue the permit to install (PTI), and then issue the NPDES permit, where a new procedure with no mandated guidelines, bioaccumulation monitoring, is required in the NPDES permit and there is evidence that the operator is sufficiently complying with regulations and that a greater environmental hazard, overflow of potentially contaminated (PC) water into a source of municipal drinking water, may occur if the permit to discharge the water in a controlled manner is not timely issued, circumvention of the traditional procedures of issuance is permissible. CECOS Internatl., Inc. v. Shank (Franklin 1992) 79 Ohio App.3d 1, 606 N.E.2d 973.

{2}. Setting limits

There is no requirement that limits for a NPDES permit be set when the director of the environmental protection agency issues a permit to install for a wastewater treatment system. Bd of Twp Trustees, Newberry Twp v Maynard, EBR 28943 and 28945 to 28947 (1983).

Citation: Title 901, Division 901:10, Chapter 1

Jurisdiction: Ohio

Document Date: July 2, 2002

Page Count: 2

Section Title: 901:10-1-03 Criteria for Decision-Making (Integrated)

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,

Terms: NPDES, application, certification, operating, owner, administrative, enforcement, BMP

Source: Integrated Document

901:10-1-03 Criteria for decision-making

(A) Criteria for decision making by the director. The director shall deny, suspend or revoke a permit to install or permit to operate if:

- (1) The permit application contains misleading or false information; or
- (2) The designs and plans fail to conform to best management practices and to the rules in [this chapter](#) or if the owner or operator fails to build the facility in accordance with design plans as approved in the permit to install or in accordance with amended and approved design plans; or
- (3) The plans for the manure management plan, the insect and rodent control plan and any other plans governing the operation fail to conform to best management practices and to rules of [this chapter](#); or
- (4) The director determines that the designs and plans describe a proposed discharge or source for which a NPDES permit is required under [this chapter](#) and that will conflict with an areawide waste treatment plan adopted in accordance with section 208 of the Act; or
- (5) The facility is not designed or constructed as a non-discharge system or operated to prevent the discharge of pollutants to waters of the state or to otherwise protect water quality; or
- (6) The director determines that the applicant has not complied with rule 901:10-1-10 of the Administrative Code.

(B) The director may deny, suspend or revoke a permit to install or permit to operate if:

- (1) The applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise and competence to operate the proposed new or modified facility in substantial compliance with Chapter 903. of the Revised Code and these rules.
 - (a) In evaluating a history of substantial noncompliance as required, the director may consider all of the following for a period of five years preceding the date of the application:
 - (i) Any information submitted on ownership and background pursuant to rule 901:10-1-

02 of the Administrative Code;

(ii) Any administrative enforcement action (including an administrative order of notice of violation), civil suit, or criminal proceeding that is:

(a) Pending against the applicant or a business concern owned or controlled by the applicant;

(b) Resolved or dismissed in a settlement agreement, in a consent order or decrees, is adjudicated or otherwise dismissed and that may or may not have resulted in the imposition of:

(i) A sanction such as a fine, penalty, payment or work or service performed in lieu of a fine or penalty; or

(ii) Cessation or suspension of operations.

(c) Any revocation, suspension, or denial of a license or permit or equivalent authorization; or

(d) With respect to paragraph (B)(1)(a) of this rule, any explanation that the applicant may choose to submit.

(C) In addition to the criteria set forth in paragraphs (A) and (B) of this rule, the director shall deny, suspend, or revoke an NPDES permit if the director determines:

(1) Discharge from the facility will prevent or interfere with attainment or maintenance of applicable water quality standards adopted under section 6111.041 of the Revised Code and the most current ~~antidegradation~~ policy adopted under section 6111.12 of the Revised Code; or

(2) Discharge from the facility will not achieve compliance with national effluent standards; or

(3) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Act; or

(4) The proposed discharge or source will conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Act; or

(5) Forms, notices, or reports required pursuant to the terms and conditions of the NPDES permit are false or inaccurate;

(6) The discharge is of any radiological, chemical, or biological warfare agent or high-level radioactive waste; or

(7) The United States army corps of engineers for the district in which the discharge is located objects in writing to the issuance of the NPDES permit as substantially impairing navigation or anchorage; or

(8) Discharge from the facility will not achieve national standards of performance for new sources; or

(9) Discharge from the facility will not achieve and maintain compliance with other requirements of the Act and the regulations promulgated thereunder.

HISTORY: 2001-02 OMR 2938 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

Citation: Title 901, Division 901:10, Chapter 3

Jurisdiction: Ohio

Document Date: July 2, 2002

Page Count: 2

Section Title: 901:10-3-01 Contents of an NPDES Permit Application (Integrated)

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,

Terms: compliance, BMP, NPDES, application, prohibition

Source: Integrated Document

Chapter 901:10-3 NPDES Permit Applications

901:10-3-01 Contents of an NPDES permit application

Unless otherwise indicated, the application for an individual NPDES permit and the NPDES permit (if issued by the director) shall contain the following information:

(A) The information required in rule 901:10-1-02 of the Administrative Code for NPDES permits.

(B) To the extent required by federal law, a manure management plan that complies with the requirements of rules 901:10-2-09 to 901:10-2-14 and rule 901:10-2-18 of the Administrative Code.

(1) Inspections required in rule 901:10-2-09 of the Administrative Code.

(2) Information on nutrient budget, manure characterization, soil tests, distribution and utilization methods for manure (if applicable to the facility), and land application of manure as required in rules 901:10-2-09 to 901:10-2-14 of the Administrative Code.

(C) An operating record developed in accordance with rule 901:10-2-16 of the Administrative Code with the use of forms prescribed by the director and other forms selected by the owner or operator for the facility. The operating record shall be maintained at the site office at all times. Upon approval of the NPDES permit, the operating record shall be deemed part of the NPDES permit.

(D) An emergency response plan containing the information required in rule 901:10-2-17 of the Administrative Code.

(E) Purpose and applicability of the individual NPDES permit.

(1) On or after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture, no person shall discharge manure from a point source or from a facility as defined in rule 901:10-1-01 or rule 901:10-3-07 of the Administrative Code into waters of the state without first obtaining an NPDES permit issued by the director of agriculture.

(2) Persons that have been issued an NPDES permit by the director are required to comply with the following requirements as determined by the director:

(a) Rule 901:10-3-10 of the Administrative Code;

(b) Rule 901:10-3-02 to 901:10-3-06 of the Administrative Code;

(c) Applicable water quality standards adopted under section 6111.041 of the Revised Code;

- (d) National standards of performance for new sources;
- (e) The ~~antidegradation~~ policy adopted under section 6111.12 of the Revised Code; and
- (f) Other applicable requirements of the Act.
- (F) In establishing the terms and conditions of the NPDES permit, the director, to the extent consistent with the Act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.
- (G) In addition to conditions required in all permits to meet the requirements of rule 901:10-3-10 of the Administrative Code, the director shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Act and regulations. These shall include conditions under [40 CFR sections 122.46, 122.47, 122.48](#) and [40 CFR Part 132](#).
- (H) Prohibitions.
 - (1) No person shall violate any effluent limitation established by rule.
 - (2) No person shall violate any other provision an NPDES permit issued by the director.

HISTORY: 2001-02 OMR 2957 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

RC 903.03, Permits to operate

RC 903.08, National Pollutant Discharge Elimination System program and permits

RC 903.09, Draft permits; public meetings and notice; denial of permits

RC 903.10, Rulemaking powers; best management practices

Citation: Title 901, Division 901:10, Chapter 3

Jurisdiction: Ohio

Document Date: July 2, 2002

Page Count: 4

Section Title: 901:10-3-08 Variances (Integrated)

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,

Terms: compliance, BMP, NPDES, effluent limitation, BPT, variance,
administrative, public notification

Source: Integrated Document

901:10-3-08 Variances

(A) A variance may be requested in accordance section 301 or section 302 of the Act. A request for a variance will be decided upon by the director, but the director's decision shall not be incorporated into any term or condition of an NPDES permit until the United States environmental protection agency regional administrator grants or denies the request for a variance.

(B) The regional administrator may deny, forward or submit to the United States

environmental protection agency office director for water enforcement and permits a recommendation for approval for a request for a variance listed in paragraph (B) of this rule that has been forwarded by the director.

- (1) Extensions based on delay in completion of a publicly owned treatment works provided that the extension meets the requirements of section 301(i) of the Act;
 - (2) Extensions based on the use of innovative technology [where effluent reduction will be significantly reduced with significantly reduced cost, the variances may provide an extended two-year period to comply] provided that the extension meets the requirements of section 301(k) of the Act;
 - (3) A variance based on the economic capability of the applicant provided that the variance shall meet the requirements of section 301(c) of the Act [maximum use of technology with economic capability of owner but the owner must show progress in reductions];
 - (4) A variance based on the presence of "fundamentally different factors" or "FDF" that meets the requirements of section 301(n) of the Act [an FDF variance is not timely unless filed when effluent limits are to be modified in a rulemaking procedure; an FDF variance shall be "no less stringent a limit than justified by fundamental differences" while also demonstrating that the existing limit will cause adverse affect]; or
 - (5) A variance that meets the requirements of section 301(g) of the Act for nonconventional pollutants that include ammonia, chlorine, color, iron, and total phenols.
 - (6) A variance based on water quality related effluent limitations under section 301 of the Act apply only to the owner or operator requesting the variance and only to the pollutant or pollutant specified in the variance. A variance does not affect or require corresponding changes to the water quality standard for the waterbody as a whole.
- (a) Eligibility. The owner or operator is not eligible for a variance under this paragraph if the following apply:
- (i) The owner or operator is a new discharger or the owner or operator of a facility that commenced a discharge after March 23, 1997.
 - (ii) If the variance would likely jeopardize the continued existence of an endangered or threatened species listed under section four of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.
 - (iii) If standards will be attained by implementing effluent limits required under sections 301 (b) and 306 of the Act and by the owner or operator implementing cost-effective and reasonable best management practices for nonpoint source control.
- (b) Timeframe for variances. A water quality based variance issued under paragraph (B) (6) of this rule shall not exceed five years of the term of the NPDES permit whichever is less. A water quality based variance shall be reviewed and modified if necessary as part of each water quality standards review pursuant to section 303(c) of the Act.
- (c) Conditions to grant a variance. A variance may be granted if:
- (i) The owner or operator demonstrates to the director that attaining the water quality standard is not feasible because:
 - (a) Naturally occurring pollutant concentrations prevent the attainment of the water quality standard;
 - (b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the water quality standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable water quality standard to be

met without violating water conservation requirements;

(c) Human-caused conditions or sources of pollution prevent the attainment of the water quality standard and cannot be remedied, or would cause more environmental damage to correct that to leave in place;

(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the water quality standard, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the water quality standard;

(e) Physical condition related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of the water quality standard; or

(f) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(ii) In addition to the requirements of paragraph (B)(6)(c)(1) of this rule the owner or operator shall also:

(a) Show that the variance requested conforms to the requirements of the ~~antidegradation~~ policy as set forth in section 6111.12 of the Revised Code; and

(b) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with the water quality standard absent the variance, such that the director is able to conclude that any such increase risk is consistent with the protection of the public health, safety and welfare.

(d) Submittal of the variance application. The owner or operator shall submit an application for a variance to the director. The application shall include:

(i) All relevant information demonstrating that attaining the water quality standard is not feasible based on one or more of the conditions in paragraph (B)(6)(c)(i) and (B)(6)(c)(ii) of this rule.

(e) Public notice of preliminary decision. Upon receipt of a complete application for a variance and upon making a preliminary decision regarding the variance the director shall provide public notice of the request and preliminary decision for a public comment pursuant to the procedures set forth in Chapter 901:10-6 of the Administrative Code. The director shall notify the other Great Lakes States and Tribes of the preliminary decision for discharges in the Lake Erie basin. This public notice requirement may be satisfied by including the supporting information for the variance and the preliminary decision in the public notice of the draft NPDES permit.

(7) The director shall issue a final decision on the variance request within ninety days of the expiration of the public comment period required in paragraph (B)(6)(e) of this rule. If the director decides to grant or deny a variance then the director shall do so in accordance with Chapter 119. of the Revised Code. If all or part of the variance is approved by the director, the decision shall include all permit conditions needed to implement those parts of the variance so approved. Such permit conditions shall, at a minimum, require:

(a) Compliance with an initial effluent limitation which, at the time the variance is granted, represents the level currently achievable by the owner or operator and which is no less stringent than that achieved under the previous permit;

(b) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions;

(c) When the duration of a variance is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of said variance; and

(d) A provision that allows the director to reopen and modify the permits based on any triennial water quality standards revisions to the variance.

The director shall deny a variance request if the permittee fails to make the demonstrations required under paragraph (B)(6)(c) of this rule.

(8) Incorporating into the permit. The director shall establish and incorporate into the NPDES permit all conditions needed to implement the variance as determined in paragraph (B)(6) of this rule.

(9) Renewal of the variance. A variance may be renewed subject to the requirements of paragraphs (B)(6) of this rule. As part of any renewal application, the owner or operator shall again demonstrate that attaining a water quality standard is not feasible based on the requirements of paragraph (B)(6)(c) of this rule. The application shall also contain information concerning compliance with the conditions incorporated into its permit as part of the original variance pursuant to paragraphs (B)(6) and (B)(7) of this rule.

Renewal of a variance may be denied if the owner or operator did not comply with the conditions of the original variance.

(10) All variances and supporting information shall be submitted by the director to the regional administrator and shall include:

(a) Relevant applications as set forth in paragraph (B)(6)(d) of this rule;

(b) Public comments and records of any public hearings pursuant to paragraph (B)(6)(e) of this rule;

(c) The final decision of the director; and

(d) The NPDES permit.

(e) Information required by this paragraph shall be submitted by the director within thirty days of the date of the final variance decision. The information required by paragraph (B)(6)(d) of this rule shall be submitted in accordance with the terms of the memorandum of agreement with the regional administrator pursuant to [40 CFR 123.24](#).

(11) All variances shall be transmitted to the Ohio environmental protection agency and appended to the water quality standard rules adopted in accordance with section 6111.041 of the Revised Code.

(C) The regional administrator may deny, forward or submit to the United States environmental protection agency office director for water enforcement and permits a recommendation for approval for a request for a variance listed in paragraph (B) of this rule that has been forwarded by the director.

(D) The United States environmental protection agency regional administrator or the United States environmental protection agency office of the director for water enforcement and permits may approve or deny any variance request submitted under paragraph (C) of this rule. If the regional administrator or office director approves the variance, the director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance has been approved or denied shall identify the applicable procedures for appealing that decision. An owner or operator shall be afforded an appeal of the decision in accordance with 40 C.F.R. section 124.64 and Chapter 119. of the Revised Code.

HISTORY: 2001-02 OMR 2959 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

RC 903.08, National Pollutant Discharge Elimination System program and permits

RC 903.10, Rulemaking powers; best management practices

Citation: Title 901, Division 901:10, Chapter 6

Jurisdiction: Ohio

Document Date: July 2, 2002

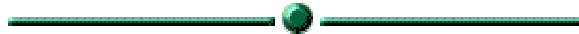
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Section Title: 901:10-6-05 NPDES Fact Sheets (Integrated)

Subject water, waste, discharge, agriculture, animal feeding operation, permitting,

Terms: BMP, NPDES, administrative, public information

Source: Integrated Document



901:10-6-05 NPDES fact sheets

(A) A fact sheet shall be prepared prior to issuance of a draft NPDES permit. The fact sheet shall include such information as may be required by federal statute or rule and may also include such additional information as the department deems desirable.

(B) The department shall maintain a mailing list of persons or groups requesting fact sheets prepared for any specified NPDES permits under section 903.08 of the Revised Code and persons or organizations who have expressed an interest in or may, by the nature of their purposes, their activities or their members be affected by or have an interest in ~~antidegradation~~ reviews and requesting fact sheets prepared for any specified proceedings relating to such application, copies of additional fact sheets prepared, or other information is desired.

(C) All notices required or authorized for actions on NPDES permits shall be mailed to all persons on the mailing list of subscribers maintained for the issuance of NPDES permits.

HISTORY: 2001-02 OMR 2976 (E), eff. 7-2-02

RC 119.032 rule review date(s): 7-2-07

CROSS REFERENCES

RC 903.09, Draft permits; public meetings and notice; denial of permits

RC 903.10, Rulemaking powers; best management practices